

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

SILVESTRE B. CUEVAS,

Petitioner,

v.

**Civil Action No. 2:07 CV 31
(Maxwell)**

JOE DRIVER,

Respondent.

ORDER

It will be recalled that on April 19, 2007, *pro se* Petitioner Silvestre B. Cuevas, a federal prisoner incarcerated at USP Hazelton in Bruceton Mills, West Virginia, instituted the above-styled civil action by filing an Application & Motion For Writ Of Habeas Corpus Pursuant To 28 U.S.C. § 2241.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

By Order entered May 9, 2007, Magistrate Judge Seibert provided the Respondent with thirty days from the date of entry of said Order in which to

show cause why the Petition should not be granted.

On June 5, 2007, the Respondent filed a Memorandum In Support Of Respondent's Motion To Dismiss Or In The Alternative For Summary Judgment.

In a Roseboro Notice issued August 10, 2007, Magistrate Judge Seibert gave the Petitioner thirty days from the date thereof in which to file a response to the Respondent's Motion To Dismiss Or In The Alternative For Summary Judgment and advised him that a failure to respond might result in the entry of an order of dismissal against him. A Petition To Deny Respondents Motion To Dismiss Petitioner's Writ Of Habeas Corpus was filed by the Petitioner on August 31, 2007.

On November 21, 2007, United States Magistrate Judge James E. Seibert issued a Report And Recommendation wherein he recommended that the Respondent's Motion To Dismiss be granted and that the Petitioner's Application & Motion For Writ Of Habeas Corpus Pursuant To 28 U.S.C. § 2241 be denied and dismissed with prejudice.

In his Report And Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment

of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Seibert's November 21, 2007, Report And Recommendation have been filed by either the Petitioner or the Respondent and that this matter is now ripe for review.

Upon consideration of Magistrate Judge Seibert's November 21, 2007, Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on November 21, 2007, be, and the same is hereby, **ACCEPTED** in whole. Accordingly, it is

ORDERED that the Respondent's Motion To Dismiss (Docket No. 6) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Petitioner's Application & Motion For Writ Of Habeas Corpus Pursuant To 28 U.S.C. § 2241 (Docket No. 1) be, and the same is

¹The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

hereby, **DENIED** and **DISMISSED** with prejudice. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record herein.

ENTER: March 6 , 2008

/S/ Robert E. Maxwell

United States District Judge